

July 30, 1999

**Dishonor, Dollars, Disbarment (?)**

## **What His Contempt of Court Is Going to Cost the President**

William Jefferson Clinton has been held in contempt of court.<sup>1</sup> He is the first President in American history to attain this low honor.<sup>2</sup>

On April 12, 1999, United States District Judge Susan Webber Wright held the President in civil contempt for "giving false, misleading and evasive answers that were designed to obstruct the judicial process"<sup>3</sup> in the sexual harassment-civil rights lawsuit filed by Paula Jones.

In addition to the infamy which attaches to the President, Judge Wright imposed three sanctions:

First, the President was ordered to pay the United States Government \$1,202 for expenses incurred by the judge and her clerk in traveling to Washington, D.C., to preside over the President's deposition.

Second, the President was ordered to pay the plaintiff's reasonable expenses and attorneys' fees that were generated by the President's willful failure to tell the truth. Mrs. Jones's two sets of attorneys estimated that the President's lying had cost them nearly \$500,000; the President's lawyer responded by saying that the costs couldn't have been more than \$34,000. Yesterday, Judge Wright said that the President must pay \$89,484 for attorneys' fees and costs.

Third, Judge Wright said that she would refer the President's contempt to the Arkansas Supreme Court's Committee on Professional Conduct "for review and any action it deems appropriate."<sup>4</sup> William Jefferson Clinton is, of course, a member of the Arkansas State Bar.

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<sup>1</sup> *Jones v. Clinton*, 36 F. Supp. 2d 1118 (E.D. Ark. 1999).

<sup>2</sup> *Id.* at 1124.

<sup>3</sup> *Id.* at 1127.

<sup>4</sup> *Id.* at 1135.

In addition, the Jones case probably will cost Mr. Clinton another two million dollars or so. The President paid \$850,000 to settle the case, and his own legal fees are estimated at more than a million dollars. Even after he has paid his bills, though, the President's problems will not be over. He may lose his license to practice law.

As noted, Judge Wright has referred the case to the ethics committee of the Arkansas State Supreme Court. Additionally, Judge Wright has retained her own jurisdiction over the matter. Her power to police Arkansas attorneys is, she says, "independent of, and in addition to, the power" held by the Arkansas court.<sup>5</sup> Judge Wright's continuing jurisdiction over the case must cause the President some consternation. As she showed by holding the President in contempt after Congress had voted on articles of impeachment, Judge Wright is willing to allow another institution to consider an issue first and then to revisit the issue if she believes additional action is necessary.

Judge Wright found the President to be in contempt of her court,<sup>6</sup> and with respect to the referral to the Arkansas Supreme Court she wrote the following:

"[T]he President's contumacious conduct in this case, coming as it did from a member of the bar and the chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system. . . ."<sup>7</sup>

"[T]he Court will refer this matter to the Arkansas Supreme Court's Committee on Professional Conduct for review and disciplinary action it deems appropriate for the President's possible violation of the Model Rules of Professional Conduct. Relevant to this case, Rule 8.4 of the Model Rules provides that it is professional misconduct for a lawyer to, among other things, 'engage in conduct involving dishonesty, fraud, deceit or misrepresentation,' or to 'engage in conduct that is prejudicial to the administration of justice.' The President's conduct as discussed previously arguably falls within the rubric of Rule 8.4 and involves matters that

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<sup>5</sup> 36 F.Supp.2d at 1132 n. 20.

<sup>6</sup> "On two separate occasions, this Court ruled in clear and reasonably specific terms that plaintiff was entitled to information regarding any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame state or federal employees. Notwithstanding these Orders, the record demonstrates by clear and convincing evidence that the President responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process." 36 F. Supp.2d at 1127 (citations and footnotes omitted). "In sum, the record leaves no doubt that the President violated this Court's discovery Orders regarding disclosure of information deemed by this Court to be relevant to plaintiff's lawsuit. The Court therefore adjudges the President to be in civil contempt of court pursuant to Fed. R. Civ. P. 37(b)(2)." 36 F. Supp. at 1131.

<sup>7</sup> 36 F. Supp. at 1131.

the Committee on Professional Conduct may deem appropriate for disciplinary action.”<sup>8</sup>

The State of Arkansas has adopted the American Bar Association’s Model Rules of Professional Conduct, as amended, as the “standard of professional conduct” for its lawyers.<sup>9</sup> Those rules apply to lawyers licensed in Arkansas whether they are in active practice, inactive practice, or in suspended status.<sup>10</sup> A lawyer who violates the rules may be sanctioned by disbarment, suspension, interim suspension, public reprimand or caution, private warning, or probation.<sup>11</sup> However, offenses involving “dishonesty, deceit, fraud, or misrepresentation by the lawyer” constitute “serious misconduct” and “warrant a sanction terminating or restricting the lawyer’s license to practice law.”<sup>12</sup> As noted (and quoted) above, Judge Wright found that the President’s conduct may violate those very strictures.

The Arkansas Rules “apply to complaints filed and formal complaints instituted against attorneys after” January 15, 1998, irrespective of when the alleged misconduct took place.<sup>13</sup> The Rules require the Supreme Court Committee on Professional Conduct to “accept and treat as a formal complaint any writing signed by a judge of a court of record in this State.”<sup>14</sup> Therefore, it appears that *Judge Wright’s opinion of April, 1999 is sufficient, by itself, to constitute a formal complaint to Arkansas’s committee on legal ethics* with respect to the professional conduct of William Jefferson Clinton, a lawyer licensed by the State of Arkansas.

It should be emphasized that a lawyer may be disciplined for conduct that does not bear a direct relationship to his practice as a lawyer. For example, in 1974 the Arkansas Supreme Court revoked for one year the license of a lawyer who was convicted of willful failure to pay his Federal income tax, although neither his competence nor his relationships with his clients was questioned. The court said, “We . . . reject any suggestion that misconduct of an attorney which is not connected with his professional activities or does not impair his ability to represent clients

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<sup>8</sup> *Id.* at 1132 (footnotes omitted).

<sup>9</sup> *In re Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law*, Sec. 1.B., 963 S.W.2d 562, 563 (Arkansas 1998). See also, Averill, “The Revised Lawyer Discipline Process in Arkansas: A Primer and Analysis,” 21 *University of Arkansas at Little Rock Law Journal* 13 (1998).

<sup>10</sup> *Id.*, Sec. 1.A.

<sup>11</sup> *Id.* at 573, Sec. 7.D.

<sup>12</sup> *Id.*, Sec. 7.B.

<sup>13</sup> *Id.* at 563, Sec. 1.A. & page 562 (*per curiam* statement giving effective date).

<sup>14</sup> *Id.* at 568, Sec. 5.A.

affords no basis for disciplinary action.”<sup>15</sup>

The ethics rules show a special concern with lawyers who abuse a public trust. The official commentary on Rule 8.4 of the Model Rules of Professional Conduct says, “Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of attorney. . . .” Few men have held the high offices entrusted to Bill Clinton: Before becoming President of the United States, Mr. Clinton was Governor of Arkansas and Attorney General of Arkansas. Before that he was a professor of law at the University of Arkansas.

One legal encyclopedia offers the following excellent summary of the rules:

“An attorney will be subject to disciplinary proceedings for activities that are outside his or her professional work when his or her conduct is indicative of moral unfitness for the profession. A lawyer may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Thus, an attorney may be disciplined for moral delinquency while filling a position of trust.”<sup>16</sup>

In September, 1998, the Democratic Speaker of the Massachusetts House of Representatives refused to attend a fund raiser with President Clinton because of the scandal that was enveloping Mr. Clinton. The Massachusetts Speaker said that the President would face disbarment if he had lied, and that it was “a remarkable thing” but “that standards for lawyers might actually be higher than standards for the President of the United States.”<sup>17</sup> It was generally recognized that the gentleman from Massachusetts was being sarcastic.

We have yet to hear, though, from Arkansas’s guardians of legal ethics and professional standards.

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<sup>15</sup> *The Supreme Court Committee on Professional Conduct v. Jones*, 256 Ark. 1106, 1107, 509 S.W.2d 294 (1974) (per curiam).

<sup>16</sup> *American Jurisprudence* 2d, “Attorneys at Law” §84 (two paragraphs combined; two footnotes omitted). See also, Rhode, “Moral Character as a Professional Credential,” 94 *Yale Law Journal* 491 (1985), and “Fabrication or Suppression of Evidence as Ground of Disciplinary Action Against Attorney,” 40 A.L.R. 3d 169, esp. §5, “Attorney’s perjury.”

<sup>17</sup> “President visits Hub for rally, fund-raiser,” *The Boston Herald*, Sept. 17, 1998, p. 1.